

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA

vs.

CASE NO.: 3:01-CR-00519-02 (JAG)

DAVID RENATO NUNEZ-PEREZ

MOTION IN COMPLIANCE WITH COURT ORDER (DOCKET 206)

**TO THE HONORABLE JAY A. GARCIA-GREGORY
SENIOR UNITED STATES DISTRICT JUDGE
FOR THE DISTRICT OF PUERTO RICO**

COMES NOW, Ricardo A. Carrillo-Lopez, United States Probation Officer of this Honorable Court, presenting an official report as to the substance abuse treatment of Mr. David Renato Nunez-Perez. Who, after requesting an appeal of his instant offense case and while the same is being reviewed by the Honorable Court, was released pending appeal on July 18, 2023.

On August 14, 2023, Mr. Nunez-Perez submitted a urine sample, which tested positive to Cocaine and Fentanyl. Upon questioning by the Probation Officer, he admitted to said positive result and proceeded to voluntarily sign the admission drug use form. Additionally, said result was sent to Alere Toxicology Services, Inc. Said result was confirmed positive to both stated substances. Afterwards, on August 21, 2023, Mr. Nunez-Perez once again tested positive to Cocaine and Fentanyl. He proceeded to deny said results, and the same was sent for confirmation at Alere Toxicology Services, Inc. Said

result was confirmed positive to Cocaine and Fentanyl. In response to this latest positive test, Mr. Nunez-Perez enrolled himself in outpatient substance abuse treatment at APS Clinics of Manati on October 1, 2023. Finally, on October 4, 2023, Mr. Nunez-Perez submitted to a urine test conducted by the Probation Officer during a routine home visit and he tested positive yet again to Cocaine and Fentanyl. Mr. Nunez-Perez accepted the positive result and proceeded to voluntarily sign the drug use admission form. In response to this third positive test, Mr. Nunez-Perez was referred for inpatient substance abuse treatment at Hogar Santisima Trinidad by the Probation Officer, where he was admitted on October 11, 2023. After his discharge from said treatment center, Mr. Nunez-Perez was to be promptly transitioned back to his outpatient substance abuse treatment at APS Clinics of Manati in order to ensure his continued recovery. It must be noted that the Honorable Court was informed of these positive tests and the proposed plan of action the Probation Office intended to execute with Mr. Nunez-Perez via a motion filed on October 12, 2023 under case number (19-CV-01555 WYG, dkt. 87), which was later filed under this case as per Magistrate Judge McGiverin's orders on July 8, 2024 (dkt. 180).

On November 9, 2023, while under inpatient substance abuse treatment at Hogar Santisima Trinidad, Mr. Nunez-Perez was subjected to a drug test by the Probation Officer, which yielded a negative result to all controlled substances. Subsequently, on November 17, 2023, Mr. Nunez-Perez was successfully discharged from Hogar Santisima Trinidad and, as per the proposed plan of action, continued his substance abuse treatment on an outpatient basis at APS Clinics of Manati. Additionally, and in an effort to also assist Mr. Nunez-Perez's transition into the free community, the Probation Office also facilitated an employment opportunity for Mr. Nunez-Perez at Xperts LLC,

which is a company dedicated to the landscaping care and maintenance of various vegetated areas across Puerto Rico. It must be noted that this employment was facilitated by the Probation Office alone through the work of its Community Resource Specialist, Jose A. Cardona.

On January 30, 2024, during a routine home visit by the Probation Officer, Mr. Nunez-Perez was subjected to a drug test which yielded a positive result for Cocaine and Fentanyl. Upon questioning by the Probation Officer, Mr. Nunez-Perez verbally admitted to said positive but declined to sign the admission of drug use form. In response to this, the sample was sent for confirmation at Alere Toxicology Services, Inc. and was subsequently confirmed positive for both Cocaine and Fentanyl. In response to this positive test, aside from continuing enrolled in outpatient substance abuse treatment at APS Clinics of Manati, Mr. Nunez-Perez was re-enrolled in the Random Drug Testing Program call system by the Probation Officer in a concerted attempt to deter him from further illicit use of controlled substances. Afterwards, on February 7 and 21 respectively, as part of the Random Drug Testing Program call system, Mr. Nunez-Perez tested positive again for Cocaine and Fentanyl. When questioned by the Probation Officer, Mr. Nunez-Perez again verbally admitted to said positive tests but declined to sign the admission of drug use form. As a result, the urine samples were sent for conformation to Alere Toxicology Services, Inc. and were both confirmed positive to Cocaine and Fentanyl. Subsequently, on February 27, 2024, the Probation Officer conducted a routine home visit to Mr. Nunez-Perez in order to verify if his illicit use of controlled substance had subsided. Upon instructing Mr. Nunez-Perez to provide a urine sample for testing, he refused and thus was not adhering to instructions issued by the Probation Officer as per

conditions of release. Afterwards, on March 1st, 2024, as part of the Random Drug Testing Program call system, Mr. Nunez-Perez was summoned to provide a urine sample testing, which yielded positive to Cocaine and Fentanyl. In response, the Probation Officer contacted Mr. Nunez-Perez to address this positive test. He proceeded to verbally admit the same but declined once again to sign the drug admission form. The sample was then sent for confirmation at Alere Toxicology Services, Inc. and was confirmed positive to Cocaine and Fentanyl. Subsequently on March 21, 2024, during a routine home visit by the Probation Officer, Mr. Nunez-Perez submitted a urine sample for testing which yielded positive to Cocaine and Fentanyl. Mr. Nunez-Perez verbally admitted to the same, but declined to sign the drug use admission prompting the Probation Officer to once again send the sample for confirmation at Alere Toxicology Services, Inc. The same was confirmed positive to Cocaine and Fentanyl. On April 5, 2024, Mr. Nunez-Perez failed to report for drug testing when summoned by the Random Drug Testing Program call system, which constitutes an administrative positive test. Finally, on April 12, 2024, the Probation Officer visited Mr. Nunez-Perez at his employment (Xperts LLC), where he submitted a urine sample for testing. The same yielded positive results for Cocaine and Fentanyl. When questioned, Mr. Nunez-Perez once again verbally admitted to having used said substances but declined to sign the drug use admission form.

Throughout this time and in response to these positive tests, the Probation Office and the Federal Public Defenders Office collaboratively worked and formulated a plan of action to both assist Mr. Nunez-Perez in overcoming his apparent substance abuse problem, while also allowing him to continue benefiting from his medical treatment for his physical ailment and not overly affecting his current employment opportunity at Xperts

LLC, which was facilitated by the Probation Office. As such, the Honorable Court was duly informed via a motion filed on April 18, 2024 under case number (19-CV-01555 WYG, dkt. 89), which was later filed under this case as per Magistrate Judge McGiverin's orders on July 8, 2024 (dkt. 181). The beforementioned positive tests were reported and it was also respectfully requested that the Honorable Court allow the execution of the proposed plan to have Mr. Nunez-Perez once again submit to an inpatient detoxification program. This time privately at Hospital San Juan Capestrano. Once he concludes said program, he will then be transferred to said hospital's intensive out-patient substance abuse program, where he would receive treatment sessions three days per week from 5:30pm to 8:30pm until duly discharged. The added benefit of this proposed program, as it is out-patient, is that it would allow for Mr. Nunez-Perez to continue complying with his medical appointments and treatments, while also being able to continue gainful employment at Xperts LLC. In addition to this, and in order to verify his sobriety, Mr. Nunez-Perez would also continue enrolled under the Random Drug Testing Program call system and will be subjected to regular testing by the Probation Officer during community contacts. On April 16, 2024, Mr. Nunez-Perez admitted himself into said detoxification program, which lasted a total amount of seven (7) days.

Mr. Nunez-Perez was then successfully discharged from Hospital San Juan Capestrano on April 23, 2024, with follow-up appointments already scheduled. Unfortunately, it was brought to the Probation Officer's attention that Hospital San Juan Capestrano could not provide Mr. Nunez-Perez with the intensive outpatient substance abuse treatment as previously planned. In response to this, the Probation Officer promptly referred Mr. Nunez-Perez for intensive outpatient substance abuse treatment at Clinica

Medica Psicoterapeutica del Noroeste – Arecibo. This treatment protocol required Mr. Nunez-Perez to attend treatment sessions three (3) times per week for a period of thirty (30) days and then he would be transitioned and continue under regular outpatient treatment there as well.

Unfortunately, on May 7, 2024, after being discharged from his voluntary detoxification program at Hospital San Juan Capestrano, Mr. Nunez-Perez tested positive to Cocaine and Fentanyl when he was summoned for a drug test by the Random Drug Testing Program call system. When questioned by the Probation Officer on May 8, 2024, during a routine home visit by the Probation Officer, Mr. Nunez-Perez denied having consumed said substance, which prompted the Probation Officer to have the same sent for confirmation at Alere Toxicology Services, Inc. The same was confirmed positive to Cocaine, but a confirmation for Fentanyl could not be completed due a lack of urine quantity for proper testing. Subsequently, on May 15, 2024, Mr. Nunez-Perez was summoned to provide a urine sample for testing by the Random Drug Testing Program, which yielded positive to Cocaine and Fentanyl. When questioned, Mr. Nunez-Perez denied the results. The results were then sent for confirmation at Alere Toxicology Services, Inc. and were confirmed positive for both Cocaine and Fentanyl. On May 21, 2024, Mr. Nunez-Perez tested positive again for Cocaine and Fentanyl and, during a meeting held on May 31, 2024, between his substance abuse therapist at Clinica Medica Psicoterapeutica del Noroeste – Arecibo, the Probation Officer and Mr. Nunez-Perez himself, he openly admitted to having consumed said substance and voluntarily signed the drug use admission form. Then, on June 5 and 13 respectively, Mr. Nunez-Perez tested positive again for Cocaine and Fentanyl. Mr. Nunez-Perez denied both results and

the same were sent for confirmation at Alere Toxicology Services, Inc. Both samples were confirmed positive to Cocaine and Fentanyl. Finally, on June 26, 2024, Mr. Nunez-Perez submitted a urine sample that tested positive to Cocaine, Fentanyl and Opiates. The results were once again denied by him and, in response, were sent for confirmation. Alere Toxicology Services, Inc. confirmed said sample positive for all three (3) substances.

In response to Mr. Nunez-Perez's apparent and continued illicit use of substance despite receiving all the assistances the Probation Office is capable of providing, in addition to the joint plan proposed and executed by the Probation Office in conjunction with the Federal Public Defenders Office, the Honorable Court was informed, via a motion filed by the Probation Office on July 2, 2024 under case number (19-CV-01555 WYG, dkt. 90) which was later filed under this case as per Magistrate Judge McGiverin's orders on July 8, 2024 (dkt. 182), where it was respectfully recommended that, due to Mr. Nunez-Perez's continued illicit use of controlled substance, the fact that all assistances have been provided to him and the fact that his total positive drug tests exceed three (3) in less than a twelve (12) month period, triggering an automatic revocation of his release, an arrest warrant be issued against Mr. Nunez-Perez and that a show cause hearing be scheduled.

Said arrest warrant was issued by the Honorable Court and a hearing was held on July 8, 2024. On said date, Mr. Nunez-Perez was ordered release pending further revocation proceedings with the added condition that he must submit to a 10-day detoxification program at Hogar Compromiso de Vida, which was proposed by the Federal Public Defenders Office. Mr. Nunez-Perez was admitted to said program on July 9, 2024 and was successfully discharged on July 18, 2024. Upon his discharge, Mr.

Nunez-Perez was duly transitioned back to outpatient substance abuse treatment at Clinica Medica Psicoterapeutica and, in addition, mental health treatment at APS Clinics of Manati with the addition of mental health medication in the form of Ativan and substance abuse medication in the form of Buprenorphine.

On the same date of his discharge from Hogar Compromiso de Vida, the Probation Officer visited Mr. Nunez-Perez at his place of residence. During the conversation, Mr. Nunez-Perez requested the Probation Officer provide him with a grace period of ten (10) days in order to ensure that he rid his body of any traces of controlled substances. The Probation Officer agreed to provide Mr. Nunez-Perez with grace period he requested. As such, on July 31, 2024, a full thirteen (13) days after having visited Mr. Nunez-Perez on July 18, 2024. The Probation Officer contacted him on his way to his employment at Xperts LLC and requested a urine sample for testing. Said sample yielded positive results for Cocaine and Fentanyl. When questioned by the Probation Officer, Mr. Nunez-Perez denied said results and the same were sent for confirmation at Alere Toxicology Services, Inc. and were confirmed positive for both substances. On August 6, 2024, Mr. Nunez-Perez provided another urine sample for testing and the same yielded positive yet again to Cocaine and Fentanyl. Upon intervention by the Probation Officer, Mr. Nunez-Perez denied the results and the same were sent for confirmation. Alere Toxicology Services, Inc. confirmed said sample was negative to Cocaine, but positive to Fentanyl.

The Honorable Court was informed of the two (2) positive tests during Mr. Nunez-Perez's release pending revocation via a motion filed by the Probation Office on August 13, 2024 (dkt. 196). An arrest warrant was recommended by the Probation Office, but the Honorable Court ordered to stay the execution of said warrant after the Federal Public

Defenders Office filed motion requesting the same and a status conference was held on August 16, 2024. However, during said hearing, the Honorable Court ordered the installation of a location monitoring system and the obtaining of a urine sample for testing from Mr. Nunez-Perez on August 19, 2024. As per Court order, he duly reported to the Probation Office on said date where a location monitoring device was installed, and a urine sample was provided for testing. Said sample yielded a positive result once again to Cocaine and Fentanyl. Said result has also been sent to Alere Toxicology Services, Inc. for confirmation and the results will be duly informed to the Honorable Court upon receipt.

As it can be understood from the provided timeline, the Probation Office has provided Mr. Nunez-Perez with all the resources it has at its disposal and those beyond its reach to counter his apparent substance abuse issue. In order to deter further illicit substance use, the use of the Random Drug Testing Program call system has been employed and continues to be employed to this date. Mr. Nunez-Perez was allowed to seek outpatient substance abuse treatment on a private basis at APS Clinics of Manati. When that failed, he was promptly referred for inpatient substance abuse treatment at Hogar Santisima Trinidad, which is a contracted provider of the Probation Office. Once discharged, Mr. Nunez-Perez was then transitioned back to outpatient substance abuse treatment at APS Clinics of Manati. Once again struggling with substance abuse, a joint plan was created and executed by both the Probation Office and the Federal Public Defenders Office in which Mr. Nunez-Perez submitted himself to a voluntary detoxification program at Hospital San Juan Capestrano and then transitioned to an intensive outpatient substance abuse treatment program at Clinica Medica Psicoterapeutica del Noroeste –

Arecibo, another contracted provider of the Probation Office. Once he successfully completed the same, he remained under regular outpatient treatment at the beforementioned clinic. The Honorable Court also provided an opportunity for Mr. Nunez-Perez to combat his substance abuse issue by allowing to remain under release conditions pending revocation and submit himself to another detoxification program at Hogar Compromiso de Vida. Upon his discharge, he was then transitioned back to his outpatient substance abuse treatment at Clinica Medica Psicoterapeutica del Noroeste - Arecibo and was also referred for mental health treatment at APS Clinics of Manati, both of which he continues to comply with to this date. Nevertheless, and taking absolutely nothing away from Mr. Nunez-Perez compliance with his treatments, he continues to illicitly consume controlled substances even with a serious health issue he has been treating since his release. Taking this into consideration, and to rule out the fact that his health issue could contribute to Mr. Nunez-Perez continuing to test positive as he has stated in the past to the Probation Officer, the Probation Office requested two clinical interpretations of Mr. Nunez-Perez's positive test. The first was conducted between the urine samples obtain on August 14, 2023 and August 21, 2023, due to the close proximity of both dates. Alere Toxicology Services Inc. confirms that Mr. Nunez-Perez reused Cocaine and Fentanyl between those two dates. The second clinical interpretation was performed on the urine samples provided by Mr. Nunez-Perez from May 7, 2024 to June 13, 2024. Alere Toxicology Services, Inc. also confirmed that Mr. Nunez-Perez reused Cocaine and Fentanyl in between all the urine tests performed within these dates.

As such, taking into consideration these facts and also keeping in mind all the contracted and non-contracted assistances that have been provided to Mr. Nunez-Perez

in a genuine effort to assist him with combating his substance abuse issue, the Probation Office had no other recourse than to request the Honorable Court's intervention in this case since it deems that Mr. Nunez-Perez was and continues to be a potential risk of danger to himself and the community at large due to his apparent substance abuse. Although Mr. Nunez-Perez has complied and continues to comply with treatment and has made a concerted effort in reintegrating himself back into the community by maintaining stable employment, progress in dealing with substance abuse is largely measured through the results of drug tests. Out of all the drug tests administered to Mr. Nunez-Perez since his release, twenty (20) tests to be precise, only one (1) has yielded negative results back in 2023. All others have yielded positive results to Cocaine and/or Fentanyl, a dangerous and potentially deadly combination of substances known colloquially as "speedball". At this point in time and as mentioned before, the Probation Office has provided Mr. Nunez-Perez with all available resources both within the Probation Office and beyond to assist in his fight against substance abuse. Unfortunately, Mr. Nunez-Perez does not show signs of improvement by continuing to test positive to controlled substances.

WHEREFORE, it is respectfully requested, unless ruled otherwise, that the Honorable Court take notice of the contents of this motion in view of Mr. David Renato Nunez-Perez's final revocation hearing scheduled for August 23, 2024 at 4:00pm.

In San Juan, Puerto Rico, this August 20, 2024.

Respectfully submitted,

LUIS O. ENCARNACION, CHIEF
U.S. PROBATION OFFICER

s/Ricardo A. Carrillo-Lopez
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that today, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the parties in this case.

In San Juan, Puerto Rico, this August 20, 2024.

s/Ricardo A. Carrillo-Lopez
Ricardo A. Carrillo-Lopez
U.S. Probation Officer